

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

PAMELA JEAN METZGER

Plaintiff,

vs.

ALBERTO GONZALES, *et al.*,

Defendants.

3:07-cv-00180-LRH (VPC)

**REPORT AND RECOMMENDATION**  
**OF U.S. MAGISTRATE JUDGE**

June 7, 2007

This Report and Recommendation is made to the Honorable Larry R. Hicks, United States District Judge. On May 23, 2007, the district court referred this action to the undersigned Magistrate Judge for screening (#5). The court has thoroughly reviewed the pleadings and recommends that plaintiff's complaint (#1) be dismissed with prejudice.

**I. HISTORY & PROCEDURAL BACKGROUND**

Plaintiff Pamela Jean Metzger, a *pro se* federal prisoner incarcerated in the Victorville Federal Correctional Institution Medium II ("FCI II") in Adelanto, California, filed this complaint on April 11, 2007 (#1). Plaintiff alleges that defendants have infringed her registered copyrighted and trademarked names, and requests a temporary restraining order, preliminary and permanent injunctions, and money damages. *Id.* Plaintiff names as defendants Alberto Gonzales, Attorney General of the United States; Harley Lappin, Director of the Federal Bureau of Prisons; and Tereser A. Banks, Warden of FCI II. *Id.* On April 27, 2007, plaintiff paid the \$350.00 filing fee in full (#3).

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## II. DISCUSSION & ANALYSIS

### A. Discussion

Pursuant to the Prisoner Litigation Reform Act (“PLRA”), “[n]otwithstanding any filing fee... that may have been paid,” a federal court must dismiss a prisoner’s complaint prior to service if the action “is frivolous or malicious,” “fails to state a claim on which relief may be granted,” or “seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2). Dismissal of a complaint for failure to state a claim upon which relief may be granted is provided for in Federal Rule of Civil Procedure 12(b)(6), and the court applies the same standard under Section 1915(e)(2) when reviewing the adequacy of a complaint.

Review under Rule 12(b)(6) is essentially a ruling on a question of law. *Chappel v. Laboratory Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for failure to state a claim is proper only if it is clear that the plaintiff cannot prove any set of facts in support of the claim that would entitle him or her to relief. *Morley v. Walker*, 175 F.3d 756, 759 (9th Cir. 1999). In making this determination, the court takes as true all allegations of material fact stated in the complaint, and the court construes them in the light most favorable to the plaintiff. *Warshaw v. Xoma Corp.*, 74 F.3d 955, 957 (9th Cir. 1996). Allegations in a *pro se* complaint are held to less stringent standards than formal pleadings drafted by lawyers. *Karim-Panahi v. Los Angeles Police Dep’t*, 839 F.2d 621, 623 (9th Cir. 1988); *see also Haines v. Kerner*, 404 U.S. 519, 520-21 (1972).

All or part of a complaint filed by a prisoner may be dismissed *sua sponte* if the prisoner’s claims are “frivolous,” in that they lack an arguable basis either in law or in fact. *Neitzke v. Williams*, 490 U.S. 319, 327-28 (1989). Frivolous claims are those based on legal conclusions

1 that are untenable (*e.g.* claims against defendants who are immune from suit or claims of  
2 infringement of a legal interest which clearly does not exist), as well as claims based on “fanciful  
3 factual allegations” (*e.g.* fantastic or delusional scenarios). *Id.*; *see also McKeever v. Block*, 932  
4 F.2d 795, 798 (9th Cir. 1991).

6 **B. Analysis**

7 Plaintiff alleges that she is a foreign state pursuant to the Foreign Sovereign Immunities  
8 Act, and that her names, including “Pamela Jean Blodgett,” “Pamela Jean Hickman,” and  
9 “Pamela Jean Metzger,” are “Copyrighted/Tradename/Trademarked, bonded and registered in the  
10 U.C.C. Division of the Secretary of State, State of California Sacramento, as Secured  
11 Party/Creditor/Trustee/Holder-In-Due-Course” (#1). Plaintiff contends that her name is registered  
12 for private use only, and that defendants have illegally placed a lien upon her name. *Id.* Plaintiff  
13 further alleges that because the government has no standing to place a claim upon her, this court  
14 had no jurisdiction to sentence plaintiff to prison.<sup>1</sup> Plaintiff claims that defendants have been  
15 publishing, selling and using plaintiff’s “Exemption” on the “OI Discount Bond Market offerd  
16 [sic] by Lehman Brothers,” which constitutes unfair trade practice and unfair competition. *Id.*  
17 Additionally, plaintiff contends that defendants have caused her irreparable harm by claiming  
18 ownership of plaintiff’s name and using it to pay for her incarceration, “while earning a salary,  
19 pension funds, bonus’ [sic], party’s [sic], vacations, expenses.” *Id.* Finally, plaintiff alleges that  
20 this court has conspired with defendants to “reap financial gain” by using plaintiff’s name at the  
21 Treasury. *Id.*

25 Plaintiff seeks a temporary restraining order to remove her name from defendants’ “daily  
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27 <sup>1</sup> Plaintiff is currently serving a criminal sentence at FCI II for aggravated identity theft and  
28 fraudulent use of unauthorized access devices. *See* 05-cr-00121-ECR (VPC).

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2 head-count.” *Id.* She further requests that defendants be enjoined from publishing or using her  
3 name on any government documents, and that defendants deliver all files and records at the  
4 Department of Justice, the FBI, the U.S. Postal Inspector, the Treasury, the Internet, BOP.gov,  
5 Pacer.com, and Interpol. *Id.* Finally, plaintiff seeks immediate release from custody to “mitigate  
6 the damages.” *Id.*

7  
8 Plaintiff’s complaint is clearly frivolous. The plaintiff’s factual allegations that  
9 defendants are trading her name on a bond market, have put a lien on her name, or that defendants  
10 are earning a salary, vacation time and benefits from the use of her name are “irrational and  
11 wholly incredible.” *Denton v. Hernandez*, 504 U.S. 25, 33 (1992). The court is satisfied by  
12 merely reading plaintiff’s complaint that her claims are “clearly baseless.” *Id.* The court *sua*  
13 *sponte* dismisses plaintiff’s complaint.  
14

### 15 III. CONCLUSION

16 Based on the foregoing and for good cause appearing, the court concludes that plaintiff’s  
17 complaint is frivolous because it includes “fantastic and delusional” allegations and that no  
18 amendment could remedy the complaint’s defects.  
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20 The parties are advised:

21 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of Practice,  
22 the parties may file specific written objections to this report and recommendation within ten days  
23 of receipt. These objections should be entitled “Objections to Magistrate Judge’s Report and  
24 Recommendation” and should be accompanied by points and authorities for consideration by the  
25 District Court.  
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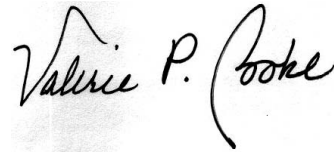
27 2. This report and recommendation is not an appealable order and any notice of appeal  
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pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the District Court's judgment.

**IV. RECOMMENDATION**

**IT IS THEREFORE RECOMMENDED** that plaintiff's complaint (#1) be **DISMISSED WITH PREJUDICE.**

**DATED:** June 7, 2007

A handwritten signature in black ink, reading "Valerie P. Cooke". The signature is written in a cursive style with a large, stylized "V" and "C".

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**UNITED STATES MAGISTRATE JUDGE**